IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

Crl.Rev.Pet.No. 338 of 2002()

SC.159/1998 of ADDL. ASSISTANT SESSIONS COURT, IRINJALAKUDA
CRA.74/1999 of III ADDL. SESSIONS COURT (ADHOC) FAST TRACK-I, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED

MUTHU @ MUSTHAFA,S/O.MUHAMMED,
PAMBINEZHATH PONNANPADY COLONY,PAPPINIVATTOM
VILLAGE,THRISSUR DISTRICT

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA,REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,ERNAKULAM

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRRP338/02

ORDER ON CRL.M.P.NO.2423/2002 IN CRL.R.P.NO.338/2002

DISMISSED

19.11.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.338 of 2002

Dated this the 19th day of November, 2007

O R D E R

The revision petitioner stands convicted for the offences under Sections 307, 323 and 452 IPC and sentenced, as modified by the appellate court, to undergo R.I. for 5 years and to pay a fine of Rs.5,000/- and in default, to undergo R.I. for two months and also sentenced to undergo R.I. for one month for the offence under section 323 IPC and to undergo R.I. for one year for the offence under Section 452 IPC. It is also provided that the sentences shall run concurrently. The fine amount if recovered is to be paid as compensation to PW7, the victim.

2. The prosecution case is that on 17.11.1994 at 10.00 a.m. when PW7 was alone in her house the accused came over there and asked for the telephone number of her husband who is working in the Middle East and when PW7 went to the bed room in order to open the almirah, the accused followed her and closed her mouth with his left hand and stabbed on the abdomen.

3. The evidence adduced in the matter consisted of the testimony of the testimony of PWs' 1 to 14, Exts. P1 to P7 and Mos. 1 to 3.

4. The FIS was rendered on the same day by PW6, the father of PW7, from at the hospital. The version of PW7 as to the incident is supported by the version of Pws. 8 and 9. PW8 is an aged woman who used to give PW7 company at night and PW9 is the uncle of PW7. It is the version of PW8 that she saw the accused running away from the house of PW7 and PW7 coming out of the house holding her hands over the stomach. It is the version of PW9 that he saw the accused while he was cutting grass in the adjacent property owned by him and when asked the accused told him that he was going to the house of PW7 to collect the telephone number of her husband. Immediately thereafter he heard a loud cry from the house of PW7 and saw the accused running away.

5. PW7 has narrated the incident as such. She has stated that the accused came to her house on the particular day at 10 a.m. and she opened the door hearing the sound of the

calling bell and the accused asked her husband's telephone number. He also asked her for a glass of water. She gave him water and went to the bed room and opened the almirah and took the telephone number in a piece of paper from the diary and entered the dining hall and that the accused came from the back and put his left arm around and closed her nose and mouth and stabbed with the knife on her abdomen. He also shouted that I will kill you. He pushed her down and attempted to cause a second stab but it hit on the door frame and the knife fell on the floor. According to her he also pressed her neck with both hands and when she fell down kicked her on the chest. According to her he ran away hearing some sounds from outside. She came out closing her stomach and saw PW8 and fell down in the courtyard. She has stated that the accused is a friend of her husband. She has stated that he used to borrow amounts from her and he has borrowed amounts two weeks earlier and thereafter when he asked for a loan of Rs.15,000/- she declined.

6. It is the version that when she came out she saw PW8 Kali had gone out at her behalf to purchase something and was

returning and she collapsed uttering that “Muthu stabbed me”. The above version of PW7 is corroborated by the statement of PW8 that PW7 was found covering her stomach with her hands and fell down saying Muthu stabbed me, Ammama”. PW2 another neighbour has also stated that she saw the accused leaving the place. Although it has been brought out in the cross examination of PW8 that she is not having very good eye sight consequent to an operation conducted sometime back I find that the version of PW8 that she witnessed the accused leaving is not to be disbelieved as the accused is a familiar person to her and that she can manage her affairs and even go to shops etc.with the allegedly weak eye sight. I find that her version that she recognized the accused is trustworthy. The evidence of PW9, the uncle of PW7 as to the fact that he saw the accused proceeding to the house of PW7 and told him that he is going to meet PW7 in order to collect the address of her husband and thereafter he heard the loud cry from the house of PW7 and the accused running away and PW7 lying in the court yard bleeding from the stomach and that she was

wearing MO.1 maxi. Perhaps it is an exaggeration that he said that he heard the words “I will kill you”. I find that the evidence of PW9 as such is credible. No contradictions with respect to the previous statement of Pws.7, 8 and 9 has been brought out in the cross examination of the above witnesses. The version of PW7 tallies with the recitals in Ext.P4 F.I.statement. The injuries sustained are proved from the version of Pws.2 and 3, the Doctors who issued Ext.P1 wound certificate which was recorded by PW2 that it was PW3 who conducted surgery on PW7. The medical evidence corroborate the prosecution version in the matter. PW7 has sustained as can be seen from Ext.P1 wound certificate deep incised wound on the stomach penetrating with omentum protruding. The wound had deep cut the muscles and blood (400 ml.)was found collected from the peritoneum. There was also a contused abrasion on the face. The depth of the injury on the stomach was 20 cm. It was found as per Ext.P7 certificate of chemical analysis that MO.2 knife contained blood stains. As already noted PW7 was subjected to multiple surgeries including colostomy conducted after six weeks. PW2, the Doctor who

recorded the wound certificate has deposed that the stage of PW7 was critical and that the injury was fatal. The injury was on a vital part of the body and the manner of attack and the words uttered by him that he will kill her and the gravity of the injury, I find squarely attracts the offence under Section 307 I.P.C. Hence the conviction for the offence under Section 307, 323 and 452 of the Indian Penal Code by the court below is only to be confirmed and I do so.

Counsel for the revision petitioner has pleaded for leniency pointing out that more than 12 years have elapsed since the date of the incident and so far the accused was facing the criminal proceedings and has underwent untold strain and that he was rather young on the date of the incident. In the circumstances and considering the long lapse of time, I find that the sentence imposed, i.e. imprisonment for five years and to pay a fine of Rs.5000/- as modified by the appellate court with respect to the offence under Section 307 I.P.C. is liable to be modified. Hence the sentence imposed for the offence under Section 307 I.P.C.is modified to rigorous imprisonment for a period of one year and

to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for six months. The fine amount, if realised shall be paid to PW7. The rest of the sentences imposed for the offence under Sections 323 and 452 I.P.C. are sustained. The same shall run concurrently with the punishment for the offence under Section 307 I.P.C. He will also be entitled for set off. The criminal revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl/ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.338 OF 2002

ORDER

19/11/2007

ORDER ON C.M.P.NO.4315/2003 IN RP(FC)NO.50/03

DISMISSED

5.11.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE